HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1286 of 2003 (SS)

Jagdish vs. Union of India

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 10.12.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1286 of 2003 (SS)

Jagdish alias Matoo …….. Petitioner

Versus

Union of India & another ..……. Respondents

Writ Petition No. 1287 of 2003 (SS)

Puran Chand alias Manua …….. Petitioner

Versus

Union of India & another ..……. Respondents

Sri Sanjay Kaushik, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 10.12.2003

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

By the present writ petitions the petitioners have prayed for the issue of a writ, order or direction in the nature of certiorari quashing the order dated 29.8.2003 passed by the inquiry officer.

Brief facts giving rise to the present writ petitions are that the petitioners were working with the respondent no.2 as class IV

employees. The petitioners have stated that on 12.02.1997 during the course of their employment a criminal case for the offence under section 302 I.P.C. was registered against them which was later on converted into a case under section 304 I.P.C. After trail, the petitioners were convicted and sentenced by the Sessions Judge. The petitioners preferred an appeal against the judgment and order of conviction by the Sessions Court before the High Court and they were released on bail by the High Court. The bail order dated 28.9.2002 was further modified on 2.5.2003 and sentence awarded by the Sessions Court was also ordered to be suspended.

According to the petitioners they were suspended on 16.10.2002 under Rule 10(2) of the Central Civil Services (Class; Control & Appeal) Rules 1965, on the ground of sentence awarded. The petitioners have challenged that the said Rule is not applicable in their cases.

Counter affidavits have been filed by the respondents in both the writ petitions and a plea has been raised that under Rule 23 (1) of the Central Civil Services (Class; control & appeal) Rules 1965, statutory appeal has been provided against the order of suspension, which reads as under:

23. Order against which appeal lies. *Subject to the provisions of Rule 22, a Government Servant may prefer an appeal against all or any of the following orders, namely.*

(i) An order of suspension made or deemed to have been made under rule 10;

The respondents have stated that the petitioners were declared by the concerned Ministry as surplus employees vide order dated 21.1.2003. However, the order-dated 21.1.2003 is not the subject matter of the present writ petitions. The writ petitioners have been filed against the order of suspension, connected with the criminal case.

In view of the aforesaid facts and circumstances since a statutory appeal has been provided under Rule 23 of the Central Civil Services (Class; Control and Appeal) Rules 1965, against the order of suspension, no writ petition is maintainable on the ground of alternative remedy.

However, the petitioners shall be at liberty to file appeals before the appropriate authority within two weeks after the receipt of the certified copy of this order which shall be disposed of by the authority concerned within one month thereafter.

The appeals shall be disposed of by the concerned authority ignoring the order dated 21.1.2003 as in the suspension orders, the petitioners were not treated as surplus employees.

Subject to the aforesaid observations the writ petitions are dismissed on the ground of alternative remedy.

10.12.2003 **(Rajesh Tandon, J.)**
Dhyani